

**REMARKS**

This Amendment is in response to the Office Action dated May 13, 2008, in which claims 1-31, 38, and 39 were withdrawn from consideration and claims 32-37 were rejected.

With this Amendment, claims 1-31, 38, and 39 have been cancelled, claims 32, 34, 35, and 37 have been amended. Claims 32-37, as amended, remain in the application and are presented for reconsideration and allowance.

Claims 32-37 were rejected under 35 U.S.C. § 102(b) as being anticipated by McPhee (U.S. Patent No. 5,199,948). Claims 32-37 are directed to elected species 13, which is illustrated in FIGS. 33-42. In particular, claim 32 and dependent claims 33 and 34 are directed to an embodiment shown in FIGS. 33-36 and 38, in which the distal portion 23 of septum 20 has a substantially circular cross-sectioning in its unstressed condition, and in which the distal (lower) portion of the channel formed within top portion 12 of the housing has a substantially elliptical shape. As a result, the distal portion of the septum is biased to a substantially elliptical shape by the distal portion of the channel. This biasing of the distal portion of the septum causes the longitudinal slit in the distal portion of the septum to be closed. The biasing of the distal portion of the septum to a closed position is illustrated in FIG. 38, and is discussed at col. 14, lines 9-41.

Independent claim 35 and dependent claims 36 and 37 are directed to an embodiment in which the distal portion of the septum has a substantially elliptical cross-section, and the distal portion of the channel formed by top portion 12 of the housing has a substantially circular cross-section. As a result, the distal portion of the septum is biased into a substantially circular shape by the distal portion of the channel, and a portion of the longitudinal slit in the distal portion of the septum is closed. This is illustrated by FIG. 37, and is discussed at col. 14, lines 42 through col. 15, line 10.

Independent claims 32 and 35 have been amended to clarify that the biasing of the distal portion of the septum by the shape of the distal portion of the channel closes the longitudinal slit in the distal portion of the septum. Amendments to claims 32, 34, 35, and 37 have also been made to correct punctuation and antecedent bases issues.

Unlike the present invention, as defined in claims 32-37, McPhee does not focus on closing longitudinal slit 33 at the lower or distal end of the septum. Instead, biasing forces are applied at the upper or proximal end of the septum to close the longitudinal slit at the proximal end. In McPhee, both the septum and the upper portion of the housing have circular cross-sections. The closing of the longitudinal slit occurs simply by the press fit of the circular cross-section septum into the circular cross-section upper portion of the housing.

As amended, claims 32-37 define a needleless luer access connector that is neither taught nor suggested by McPhee. The rejection under 35 U.S.C. § 102(b) should be withdrawn.

In the Office Action, a nonstatutory double patenting rejection was also made. The Office Action stated “Claims 1-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 32-37 of U.S. Patent Nos. 6,908,459.” It appears that the Office Action reversed the claims, and that claims 32-37 of the present application were being rejected over claims 1-7 of U.S. Patent No. 6,908,459.

The double patenting rejection is traversed. Claims 1-7 of the ‘459 patent require a rib formed on the external surface of the medial portion such that the rib is displaced from the barb until a male luer taper is inserted into the slit, at which point the rib engages the barb. Claims 32-37 do not include this limitation. Conversely, claims 32-37 are directed to closing of the slit in the distal portion of the septum by biasing the distal portion of the septum due to the difference in shape of the distal portion of the channel in the housing and the shape of the distal portion of the septum. In independent claim 32, the distal portion of the septum is substantially circular cross-section, and the channel has a substantially elliptical cross-section. In independent claim 35, the distal portion of the septum has a substantially elliptical cross-section, and the channel has a substantially circular cross-section. These limitations of independent claims 32 and 35 are not present in claims 1-7 of the ‘459 patent.

Claim 32-37 of the present application are patentably distinct from claims 1-7 of the ‘459 patent. The respective claims are structurally distinguishable, and the rejection based upon nonstatutory double patenting should be reconsidered and withdrawn.

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Application No.: 10/828,964

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In conclusion, this Amendment has placed the application in condition for allowance.  
Notice to that effect is requested.

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Date: 9/15/08

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